



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,075	01/07/2002	Rajan Patel	009-020	7008

7590 09/17/2003

Jens E. Hoekendijk  
HOEKENDIJK & LYNCH, LLP  
P.O. Box 4787  
Burlingame, CA 94011-4787

EXAMINER

NGUYEN, DINH Q

ART UNIT

PAPER NUMBER

3752

DATE MAILED: 09/17/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/043,075	PATEL ET AL.
	Examiner	Art Unit
	Dinh Q Nguyen	3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 07 July 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-25,38,39,46,59,62,71,76,80 and 99 is/are pending in the application.

4a) Of the above claim(s) 13-25,38,39,46,59,62,71,76,80 and 99 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-12 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                    6) Other: \_\_\_\_\_

#### **DETAILED ACTION**

1. Claims 13-25, 38,39,46,59,62,71,76,80 and 99 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

#### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference number 56 in page 6, line 2. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### ***Specification***

3. The disclosure is objected to because of the following informalities: reference number 14 has been using to designate both a vial (page 3, line 27) and a reservoir (page 4, line 2). Reference number 20 has been using to designate both a dosing control (page 4, line 7) and a window (page 4, line 9). Reference number 44 has been using to designate both as mating connectors (page 4, line 30) and a recess (page 5, line 1). Reference number 54 has been using to designate both a channel (page 5, line 21) and a valve (page 5, line 27)

Appropriate correction is required.

***Claim Objections***

4. Claim 1 and 3 are objected to because of the following informalities: in claim 1, line 1, "the nebulizing element" should read --the nebulizing device--; in claim 3, line 3, "the user" should read --an user--. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Haber et al.

Haber discloses a method for delivering a nebulized fluid for inhalation comprising: providing a nebulizing device 1, a reservoir 32, a container 60, a vibrating element 22/24 with a plurality of holes, the reservoir 32 with a needle cannula 34 and a needle support 36, a one way valve 26 directing fluid to the reservoir before the fluid get to the a vibrating element 22/24 (column 3, lines 55-62); delivering a volume of fluid from the container 60 to the reservoir (column 3, lines 58-62); using the nebulizing device to nebulize the volume of fluid (column 7, lines 7-62); repeating the delivering and using a number of times with the same container (column 8, lines 8-14), removing and replacing the container 60 (this is a conventional pre-filled medication cartridge as disclosed in column 4, lines 20-21, the cartridge will be removed and replace with another cartridge when the medication within the cartridge is depleted, or patient wants to remove the cartridge for a different medication cartridge); as shown in figure 2, the reservoir 32 could be replaced by removing of

Art Unit: 3752

mouthpiece 2, emitter base 4 and emitter plate 16 respectively. With respect to claim 3, the Haber device is capable of removing and replacing with the reservoir being mounted to the container as shown in the assemble steps of figure 2.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to show the art with respect to an inhalation nebulizer: Szekely, Sioutas, and Klein.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q Nguyen whose telephone number is (703) 305-0248. The examiner can normally be reached on Monday-Friday 6:30-4:00 alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.



Dinh Q Nguyen  
Patent Examiner  
Art Unit 3752

dqn